

**REMARKS**

Claims 1-97 are pending. The Office Action dated May 13, 2004, in this Application has been carefully considered. The above amendments and the following remarks are presented in a sincere attempt to place this Application in condition for allowance. Claims 93, 94, 96, and 97 have been amended in this Response. Reconsideration and allowance are respectfully requested in light of the above amendments and following remarks.

Claims 1-49 stand rejected under 35 U.S.C. §112, first paragraph, as assertedly failing to comply with the enablement requirement. Insofar as they may be applied against the Claims, these rejections are traversed.

The Examiner stated that the term “base power level” in Claim 1 was not described in the specification. However, as noted by the Examiner, “base value for power” is defined on page 8, line 1. The definition of “base value for power” is the same as the “base power level.” Therefore, Applicants respectfully request that the rejection of Claim 1 under 35 U.S.C. § 112, first paragraph, as assertedly failing to comply with the enablement requirement be withdrawn and that Claim 1 be allowed.

Claims 2-49 depend on and further limit Claim 1. Hence, for at least the aforementioned reasons, these Claims should be deemed to be in condition for allowance. Applicants respectfully request that the rejections of the dependent Claims 2-49 also be withdrawn.

Claims 50-92 stand rejected under 35 U.S.C. §112, first paragraph, as assertedly failing to comply with the enablement requirement. Insofar as they may be applied against the Claims, these rejections are traversed.

The Examiner states that the Applicants do not disclose a base  $\Delta E_b/N_0$ , a target  $\Delta E_b/N_0$  and an initial  $\Delta E_b/N_0$ . To the contrary, Applicants respectfully submit that a “first target  $E_b/N_0$ ,” a

“desired target  $E_b/N_0$ ,” and a “base  $\Delta E_b/N_0$ ” are disclosed in Claim 50, not a base  $\Delta E_b/N_0$ , a target  $\Delta E_b/N_0$  and an initial  $\Delta E_b/N_0$  as noted by the Examiner. On page 12, lines 6-7, of the original Application, “[t]he initial SCH target  $E_b/N_0$  is calculated as an offset ( $\Delta E_b/N_0$ ) to the value maintained by the MS for the FCH.” Based on the target  $E_b/N_0$  for a given communication link, the target  $E_b/N_0$  will vary from the “value maintained by the MS for the FCH” by an offset value ( $\Delta E_b/N_0$ ), providing a “first target  $E_b/N_0$ ,” within a “base  $\Delta E_b/N_0$ ” from a “desired target  $E_b/N_0$ .” Therefore, there can be multiple communications links, each having a different target  $E_b/N_0$  and each having a different offset ( $\Delta E_b/N_0$ ) as a result of the acceptable frame error rate. Accordingly, Applicants respectfully request that the rejection of Claim 50 under 35 U.S.C. § 112, first paragraph, as assertedly failing to comply with the enablement requirement be withdrawn and that Claim 50 be allowed.

Claims 51-92 depend on and further limit Claim 1. Hence, for at least the aforementioned reasons, these Claims should be deemed to be in condition for allowance. Applicants respectfully request that the rejections of the dependent Claims 51-92 also be withdrawn.

Claim 95 stands rejected under 35 U.S.C. §112, first paragraph, as assertedly failing to comply with the enablement requirement. Insofar as they may be applied against the Claim, this rejection is traversed.

The Examiner states that the “total amount of power available less an overhead reserve less a currently used power level” is not disclosed in the Application. However, on page 2, line 29, to page 3, line 3, the Application reads as follows:

A BTS has a limited amount of power for transmitting within any sector, typically 12-18 Watts (W). Out of the *total amount of power available, a reserve, typically 25%, is normally allocated to overhead and is not available to users. The remaining power is available to users for voice and data communications.* (Emphasis added.)

From the original Application, a BTS would only be able to utilize the total amount of power less the reserve (of approximately 25%) less power used by other users or application. Accordingly, Applicants respectfully request that the rejection of Claim 95 under 35 U.S.C. § 112, first paragraph, as assertedly failing to comply with the enablement requirement be withdrawn and that Claim 95 be allowed.

Claim 96 stands rejected under 35 U.S.C. §112, first paragraph, as assertedly failing to comply with the enablement requirement. Insofar as they may be applied against the Claim, this rejection is traversed.

The Examiner states that the “the overhead reserve is about 25% of the total available power” is not disclosed in the Application. However, on page 2, line 29, to page 3, line 3, the Application reads as follows:

A BTS has a limited amount of power for transmitting within any sector, typically 12-18 Watts (W). Out of the *total amount of power available, a reserve, typically 25%, is normally allocated to overhead and is not available to users.* The remaining power is available to users for voice and data communications. (Emphasis added.)

From the original Application, a BTS have a reserve that can be approximately 25% of the total power. Accordingly, Applicants respectfully request that the rejection of Claim 96 under 35 U.S.C. § 112, first paragraph, as assertedly failing to comply with the enablement requirement be withdrawn and that Claim 96 be allowed.

Claim 97 stands rejected under 35 U.S.C. §112, first paragraph, as assertedly failing to comply with the enablement requirement. Insofar as they may be applied against the Claim, this rejection is traversed.

The Examiner states that the “the overhead reserve is about 25% of the total available power” and that the “total amount of power is between 12 and 18 Watts” are not disclosed in the Application. However, on page 2, line 29, to page 3, line 3, the Application reads as follows:

A BTS has a limited amount of power for transmitting within any sector, typically *12-18 Watts (W)*. Out of the *total amount of power available, a reserve, typically 25%, is normally allocated to overhead and is not available to users*. The remaining power is available to users for voice and data communications. (Emphasis added.)

From the original Application, a BTS have a reserve that can be approximately 25% of the total power and that the total power is between 12 and 18 Watts. Accordingly, Applicants respectfully request that the rejection of Claim 96 under 35 U.S.C. § 112, first paragraph, as assertedly failing to comply with the enablement requirement be withdrawn and that Claim 96 be allowed.

Claim 94 stands rejected under 35 U.S.C. §112, second paragraph, as assertedly failing to particularly point out and distinctly claim the subject matter which the Applicants regard as their invention. Insofar as they may be applied against the Claim, this rejection is overcome.

Rejected Claim 94 as now amended more particularly recites one of the distinguishing characteristics of the present invention, namely, “transmitting the data *at* the second data transfer rate.” (Emphasis added.) Accordingly, Applicants respectfully request that the rejection of amended Claim 94 under 35 U.S.C. § 112, second paragraph, as assertedly failing to particularly point out and distinctly claim the subject matter which the Applicants regard as their invention be withdrawn and that Claim 94 be allowed.

Claim 96 stands rejected under 35 U.S.C. §112, second paragraph, as assertedly having vague language and having terms that lack a proper antecedent basis. Insofar as they may be applied against the Claim, this rejection is traversed or overcome, as appropriate.

Rejected Claim 96 as now amended more particularly recites one of the distinguishing characteristics of the present invention, namely, replacing “the overhead reserve” and “the total available power” with “an overhead reserve” and “a total available power,” respectively. Accordingly, Applicants respectfully request that the rejection of amended Claim 96 under 35 U.S.C. § 112, second paragraph, as assertedly having terms that lack a proper antecedent basis be withdrawn.

Additionally, the Examiner has stated that the use of the term “about,” which is utilized in Claim 96, is a vague term. According to M.P.E.P. §2173.05(b), the term “about” is not considered to be vague or indefinite because “a reserve amount” that is “about 25%” is a measurable amount that is flexible. Accordingly, Applicants respectfully request that the rejection of amended Claim 96 under 35 U.S.C. § 112, second paragraph, as assertedly having vague terms be withdrawn.

Claim 97 stands rejected under 35 U.S.C. §112, second paragraph, as assertedly having vague language and having terms that lack a proper antecedent basis. Insofar as they may be applied against the Claim, this rejection is traversed or overcome, as appropriate.

Rejected Claim 97 as now amended more particularly recites one of the distinguishing characteristics of the present invention, namely, replacing “the total amount of power” with “a total amount of power.” Accordingly, Applicants respectfully request that the rejection of amended Claim 97 under 35 U.S.C. § 112, second paragraph, as assertedly having terms that lack a proper antecedent basis be withdrawn.

Additionally, the Examiner has stated that the use of the term “about,” which is utilized in Claim 97, is a vague term. According to M.P.E.P. §2173.05(b), the term “about” is not considered to be vague or indefinite because “power” that is “between about 12 and 18 Watts” is a measurable

amount that is flexible. Accordingly, Applicants respectfully request that the rejection of amended Claim 97 under 35 U.S.C. § 112, second paragraph, as assertedly having vague terms be withdrawn.

Claim 93 stands rejected under 35 U.S.C. §103(a) in view of U.S. Patent No. 6,148,208 to Love (“Love”), U.S. Patent No. 6,097,965 to Honkasalo et al. (“Honkasalo”) and U.S. Patent No. 6,366,779 to Bender et al. (“Bender”). Insofar as it may be applied against the Claim, this rejection is overcome.

Rejected independent Claim 93 as now amended more particularly recites one of the distinguishing characteristics of the present invention, namely, “if the first power level exceeds the available power level, selecting at least one step from the group consisting of notifying the user of insufficient power, terminating data transmission, and retrying the data transmission at a lower transfer rate.” Support for this Amendment can be found, among other places, page 11, lines 12-21, of the original Application.

Neither Love, Bender, nor Honkasalo teach disclose or suggest selecting the step of notifying the user of insufficient power, terminating data transmission, or retrying the data transmission at a lower transfer rate. Love, Bender, and Honkasalo are each directed toward wireless telecommunication where power is required to make data transmissions. However, neither Love, Bender, nor Honkasalo consider a situation of insufficient power to transmit data. The present invention of Claim 93 allows a wireless system to select an alternate course of action if there is insufficient power to transmit data. Hence, the wireless communications network is able to have an increased amount of flexibility and be more efficient than more conventional wireless communications networks.

In view of the foregoing, it is apparent that the cited references do not disclose, teach or suggest the unique combination now recited in amended Claim 93. Applicants therefore submit that

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amended Claim 93 is clearly and precisely distinguishable over the cited reference in a patentable sense, and is therefore allowable over these references and the remaining references of record. Accordingly, Applicants respectfully request that the rejection of Claim 93 under 35 U.S.C. § 103(a) in view of Love, Bender, and Honkasalo be withdrawn and that Claim 93 be allowed.

Applicants have now made an earnest attempt to place this Application in condition for allowance. For the foregoing reasons and for other reasons clearly apparent, Applicants respectfully requests full allowance of Claims 1-97.

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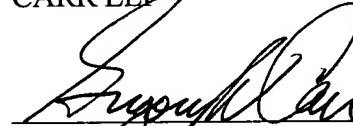
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Applicants do not believe that any fees are due; however, in the event that any fees are due, the Commissioner is hereby authorized to charge any required fees due (other than issue fees), and to credit any overpayment made, in connection with the filing of this paper to Deposit Account No. 50-0605 of CARR LLP.

Should the Examiner require any further clarification to place this application in condition for allowance, the Examiner is invited to telephone the undersigned at the number listed below.

Respectfully submitted,

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